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The Max Leather Group, Inc., and Jarrod Mark Kahn.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CHROME HEARTS LLC,

Plaintiff,

v.

GUESS?, INC., MACY'S INC.; CIPRIANI
ACCESSORIES, INC.; THE MAX LEATHER
GROUP, INC.; And JARROD MARK KAHN,
an individual,

Defendants.

Index Number: 07 CV 4812 (AKH)

Judge: Honorable Alvin K. Hellerstein

**DEFENDANTS' ANSWER TO THE
FIRST AMENDED COMPLAINT**

ANSWER TO FIRST AMENDED COMPLAINT

Defendants, GUESS?, INC., (hereafter, "GUESS?"), CIPRIANI ACCESSORIES, INC. ("Cipriani"), THE MAX LEATHER GROUP, INC. ("Max Leather"), and JARROD MARK KAHN ("Kahn") (hereafter collectively, "Defendants") hereby answer and respond to the plaintiff CHROME HEARTS, LLC's (hereinafter, "Chrome") First Amended Complaint as follows:

THE PARTIES

1. Answering Paragraph 1, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.
2. Answering Paragraph 2(a), Defendants deny that GUESS? is a California corporation. Defendants admit that GUESS?'s principal place of business is 1444 S Alameda Street, Los Angeles, CA 90021. Defendants lack information and belief concerning the remainder of the allegations contained in this Paragraph and on that basis deny those allegations.
3. Answering Paragraph 2(b), Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.
4. Answering Paragraph 2(c), Defendants admit that Cipriani has a place of business at 1415 Redfern Avenue, Far Rockaway, New York, 11691. Defendants lack information and belief concerning the remainder of the allegations contained in this Paragraph and on that basis deny those allegations.
5. Answering Paragraph 2(d), Defendants admit that Max Leather has a place of business at 1415 Redfern Avenue, Far Rockaway, New York, 11691. Defendants lack information and belief concerning the remainder of the allegations contained in this Paragraph and on that basis deny those allegations.
6. Answering Paragraph 2(e), Defendants admit that Kahn is an individual residing at 408 East 79th Street, Apartment A, New York, NY 10021. Defendants lack information and belief concerning the remainder of the allegations contained in this Paragraph and on that basis deny those allegations.

JURISDICTION

7. Answering Paragraph 3, Defendants admit that this Court has subject matter jurisdiction over the copyright and trademark infringement claims as alleged in the First Amended Complaint.

8. Answering Paragraph 4, Defendants admit that the Court has supplemental jurisdiction over the New York and common law claims as alleged in the First Amended Complaint.

9. Answering Paragraph 5, Defendants admit that venue in this judicial district is proper.

COMMON ALLEGATIONS

10. Answering Paragraph 6, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

11. Answering Paragraph 7, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

12. Answering Paragraph 8, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

13. Answering Paragraph 9, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

14. Answering Paragraph 10, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

15. Answering Paragraph 11 (erroneously labeled as Paragraph 10), Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

16. Answering Paragraph 12, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

17. Answering Paragraph 13, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

18. Answering Paragraph 14, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

19. Answering Paragraph 15, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

20. Answering Paragraph 16, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

21. Answering Paragraph 17, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

22. Answering Paragraph 18, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

COMMON ALLEGATIONS

COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 101 ET SEQ.

23. Answering Paragraph 19, Defendants deny, generally and specifically, each and every allegation contained therein.

24. Answering Paragraph 20, Defendants deny, generally and specifically, each and every allegation contained therein.

25. Answering Paragraph 21, Defendants lack information and belief concerning the allegations contained in this Paragraph and on that basis deny those allegations.

26. Answering Paragraph 22, Defendants deny, generally and specifically, each and every allegation contained therein.

27. Answering Paragraph 23, Defendants deny, generally and specifically, each and every allegation contained therein.

28. Answering Paragraph 24, Defendants deny, generally and specifically, each and every allegation contained therein.

29. Answering Paragraph 25, Defendants deny, generally and specifically, each and every allegation contained therein.

FEDERAL UNFAIR COMPETITION

30. Answering Paragraph 26, Defendants adopt and incorporate herein by reference each of its allegations, denials, and admissions contained in paragraphs 1 through 21, 23, and 24 as though set forth in full.

31. Answering Paragraph 27, Defendants deny, generally and specifically, each and every allegation contained therein.

32. Answering Paragraph 28, Defendants deny, generally and specifically, each and every allegation contained therein.

33. Answering Paragraph 29, Defendants deny, generally and specifically, each and every allegation contained therein.

34. Answering Paragraph 30, Defendants deny, generally and specifically, each and every allegation contained therein.

35. Answering Paragraph 31, Defendants deny, generally and specifically, each and every allegation contained therein.

36. Answering Paragraph 32, Defendants deny, generally and specifically, each and every allegation contained therein.

37. Answering Paragraph 33, Defendants deny, generally and specifically, each and every allegation contained therein.

38. Answering Paragraph 34, Defendants deny, generally and specifically, each and every allegation contained therein.

COMMON LAW UNFAIR COMPETITION

39. Answering Paragraph 35, Defendants adopt and incorporate herein by reference each of its allegations, denials, and admissions contained in paragraphs 1 through 21, 23, 24, 28 through 31 and 33 as though set forth in full.

40. Answering Paragraph 36, Defendants deny, generally and specifically, each and every allegation contained therein.

41. Answering Paragraph 37, Defendants deny, generally and specifically, each and every allegation contained therein.

42. Answering Paragraph 38, Defendants deny, generally and specifically, each and every allegation contained therein.

43. Answering Paragraph 39, Defendants deny, generally and specifically, each and every allegation contained therein.

PRAYER

44. Defendants deny that Chrome is entitled to the relief sought in Paragraph A of the First Amended Complaint.

44. Defendants deny that Chrome is entitled to the relief sought in Paragraph B of the First Amended Complaint.

45. Defendants deny that Chrome is entitled to the relief sought in Paragraph C of the First Amended Complaint.

46. Defendants deny that Chrome is entitled to the relief sought in Paragraph D of the First Amended Complaint.

47. Defendants deny that Chrome is entitled to the relief sought in Paragraph E of the First Amended Complaint.

48. Defendants deny that Chrome is entitled to the relief sought in Paragraph F of the First Amended Complaint.

49. Defendants deny that Chrome is entitled to the relief sought in Paragraph G of the First Amended Complaint.

50. Defendants deny that Chrome is entitled to the relief sought in Paragraph H of the First Amended Complaint.

AFFIRMATIVE DEFENSES

51. As affirmative defenses to each and every claim for relief alleged in the First Amended Complaint, Defendants respond as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

52. The First Amended Complaint, and each cause of action thereof, fails to state facts sufficient to constitute a claim for relief against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Conduct Not "Fraudulent" Nor "Likely to Mislead")

53. Defendants' practice of producing, distributing, promoting, and selling the products at issue do not and are not likely to confuse, mislead, harm, or deceive the consumer public, in that: (a) Defendants' products do not infringe any valid or enforceable trademark, trade dress, copyright, or any other intellectual property owned by Chrome; (b) Chrome's products are not inherently distinctive and have not acquired any secondary meaning; (c) the consumer public does not readily identify products similar to Chrome's with a single source; and (d) Defendants are clearly identified as the source of its products.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

54. Defendants are informed and believe, and on that basis allege, that Chrome has failed to exercise reasonable care and diligence to avoid or mitigate its damages, if any. Accordingly, in the event that Defendants are found liable to Chrome in any amount, Defendants are entitled to have that amount reduced to the extent Chrome could have avoided or reduced its alleged losses by the exercise of reasonable care and diligence.

FOURTH AFFIRMATIVE DEFENSE

(Good Faith)

55. Any and all acts alleged by Chrome to have been performed by or on behalf of Defendants were performed, if at all, in good faith, without malice, and were based upon legally sufficient justification.

FIFTH AFFIRMATIVE DEFENSE

(Innocent Intent)

56. Any and all acts of infringement alleged by Chrome to have been performed by or on behalf of Defendants were unintended, unavoidable, and innocent.

SIXTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

57. Chrome's causes of action, and their accompanying requests for injunctive relief and restitution, are barred in light of the fact that Chrome has an adequate remedy at law.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

58. Each claim in the First Amended Complaint is barred by the applicable statutes of limitation.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

59. Each claim in the First Amended Complaint is barred by the equitable doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

60. Each claim in the First Amended Complaint is barred by the equitable doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

(Abandonment)

61. Each claim in the First Amended Complaint is barred by Chrome's abandonment of its marks.

ELEVENTH AFFIRMATIVE DEFENSE

(Generic Marks)

62. Each claim in the First Amended Complaint is barred because Chrome's marks are generic.

TWELFTH AFFIRMATIVE DEFENSE

(Fair Use)

63. Each claim in the First Amended Complaint is barred because any use of Chrome's marks constituted fair use of such marks.

THIRTEENTH AFFIRMATIVE DEFENSE

(Misuse)

64. Each claim in the First Amended Complaint is barred by Chrome's misuse of its marks.

FOURTEENTH AFFIRMATIVE DEFENSE

(Authorized Use)

65. Each claim in the First Amended Complaint is barred because any use of Chrome's marks was authorized by Chrome.

FIFTEENTH AFFIRMATIVE DEFENSE

(Reservation of Additional Defenses)

66. Defendants reserve the right to assert other affirmative defenses as they become known during the course of discovery, and hereby specifically reserves the right to amend its Answer to allege said affirmative defenses at such time as they become known.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment against Chrome as follows:

1. That Chrome take nothing by its First Amended Complaint and be granted no legal or equitable relief;
2. That the First Amended Complaint be dismissed with prejudice;
3. That Defendants be awarded their costs in this action, including attorneys' fees; and
4. That the Court award Defendants such further relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury in this action.

November 15, 2007

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Index Number: 07 CV 4812 (AKH)

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AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, Leticia G. Larios, BEING DULY SWORN, DEPOSES AND SAYS:

I am not a party to this action and I am over 18 years of age.

1. On November 15, 2007, I **caused** to be served by Facsimile and Regular Mail upon:

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true and correct copies of the following listed document(s):

DEFENDANTS' ANSWER TO THE FIRST AMENDED COMPLAINT

Dated: November 15, 2007


Leticia G. Larios